IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1751 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEPUTY EXECUTIVE ENGINEER

Versus

PRAVINBHAI H PATEL

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR D.M. THAKKER for respondent

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/06/2000

CAV JUDGEMENT

Learned Advocate Ms. Sejal K. Mandavia appearing on behalf of the petitioner and Learned Advocate Mr. D.M.Thakker appearing on behalf of the respondent. Rule, Mr.D.M.Thakker Learned Advocate on

behalf of respondent waives the service of rule. With the consent of both the Learned Advocates, the matter has been taken up for final hearing today. In the present petition, the award passed by the Labour Court, Surat in Reference No.183 of 1986 dated 8.10.1998 has been challenged wherein, the Labour Court, Surat has granted reinstatement with continuity of service with full back wages of interim period with all consequential benefits. Brief facts leading to the filing of the present petition are that the respondent was appointed as a Clerk on 7th September, 1982 and his service was terminated on 16th April, 1986. At the time of termination Section 25-F has not been followed by the petitioner. Though the case of petitioner that at the time of termination the notice was given and Rs.372/which was sent to the respondent but same was not accepted by the respondent. The amount of Rs.372/- was not the complete retrenchment compensation because, in all four years service has been completed by respondent and therefore, respondent was entitled for 2 months salary by way of the retrenchment compensation and it was not the case of petitioner that two months salary by way of the retrenchment compensation were sent to the respondent. In paragraph 8 of the Labour Court in terms comes to the conclusion that in the year 1983-1984 304 days, 1984-1985 339 days and in the year 1985-1986 360 days actual working has been proved by the respondent and in clear finding of fact the Section 25-F has been violated by the petitioner and therefore, considering the reasoning and the conclusion of the Labour Court which is based upon legal evidence. The Labour Court has not committed any error while setting aside the termination order with a direction of granting reinstatement with continuity of service with all consequential benefits. The contention of Ms. Mandavia that at the time of termination the rentrenchment compensation were paid to the respondent workman and considering the cross-examination of respondent workman wherein, he admits that the amount of retrenchment compensation was offered to the respondent but, same was refused by the respondent-workman. The said amount which was offered Rs.372/- which was not accepted by the respondent workman. The one month notice was given prior to termination which fact was admitted by respondent workman. Ms. Mandavia relied upon the evidence of respondent-workman wherein, he was cross-examined by petitioner's advocate. But, facts remained that total service of respondent-workman was three years seven months and nine days. Therefore, workman is entitled for retrenchment compensation of four years which comes to two months salary and therefore, the amount of Rs.372/which was offered as retrenchment compensation as

per say of petitioner, is not complete amount of retrenchment compensation and therefore, the termination order is not passed after complying provision of Section 25-F of Industrial Disputes Act, 1947. Therefore, the finding of the Labour Court is correct, legal and valid which does not require interference so far it relating to direction of granting reinstatement with continuity of service with all consequential benefits.

Now question is required to be examined so far relating to the question of granting full back-wages of interim period as directed by the Labour Court. In the present case the termination was dated 16.04.1986. Date of reference is dated 20th June, 1986 and date of award is 8th October, 1998. The net result is that the respondent who had worked about three and half year with the petitioner, is entitled to the the salary of about 12 years without having worked for the intervening period. Whether in such circumstances, the full back wages can be granted or not is the question which requires consideration. The reference has remained pending before the Labour Court for final decision for a period of about 12 years. Petitioner is a public body and State Authority. Respondent was not a permanent workman. The Apex Court has considered similar situation in case of H.M.T. Limited v. The Labour Court Ernakulam and Others reported in 1994(2) C.L.R. page-22. In the said decision, the Apex Court has confirmed the orders passed by the High Court upholding the award passed by the labour court reinstating the workman. However, the apex Court has taken into consideration the period which has elapsed in between and has held that no party should be made to suffer on account of delay in decision by the Court. In the said decision, taking into consideration the delay, which has occurred in disposal of the reference, the apex court has reduced the back wages to the tune of 60% instead of 100 % as has been granted by the labour court and confirmed by the High Court.

Similarly, recently such question has been examined by the Apex Court in the case of Management of M.C.D. Vs. Premchand Gupta reported in AIR 2000 S.C. Page 454. The Apex Court has observed that the reason for not granting full back wages from the date of his termination i.e. 29th April, 1966 till the actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered for more than 3 decades. To saddle the petitioner and its Exchequer which is meant for public benefit with full back wages for the entire period would be too harsh to the

petitioner. There is delay in disposal of cases in the Courts, that has created this unfortunate situation for both the sides. The respondent workman is also not at fault as he was clamouring for justice for all these years. However, this delay in courts proceedings for no fault of either sides, permits us not to burden the petitioner being a public body, with full back wages for the entire period of unemployment especially when no fault of either side, actual work could not be taken from the respondent workman by the petitioner. It is true that the respondent workman was always willing to work but he was not be permitted to work so long as the termination order stood against him. All these factors together point in the direction of not saddling the petitioner, a public body with the burden of entire full back wages to be granted to the respondent workman after the passage of 33 years since the date of termination of his services. The second reason is that the respondent workman for all these years could not have remained totally unemployed though there is not clear evidence that he was gainfully employed and was so well off that he should be denied complete back wages but keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still 2 more years to reach the age of superannuation as we are told that not granting of his full back wages on the peculiar facts and circumstances of this case, would meet the end of justice. The petitioner shall reinstate the respondent workman with continuity of service within 8 weeks from today and still also pay 50% back wages from the date of termination till his actual reinstatement in service of the petitioner with continuity of service.

In light of the observations made by the Apex Court in two above referred cases, in the present case the termination of respondent workman was 16th April, 1986 he completed more than three and half years service. He was not a permanent employee. He raised dispute against the termination after the period of 2 months. The petitioner is a public body and state authority. The 12 years period has been passed in taking decision by the Labour Court in reference. Considering all these aspects and observations made by the Apex Court, the respondent workman is entitled to 60% back wages from the date of termination i.e. 16th April, 1986 to 8th October, 1998, date of award and full wages from the date of award till the date of actual reinstatement. If such direction will be given in respect to the back wages of interim period, which will meet the ends of justice between the parties.

Therefore, the award passed by the Labour Court,

Surat in reference No.183 of 1986 dated 8th October, 1998 is modified qua back-wages as under confirming the direction of granting reinstatement with continuity of service.

The respondent-workman is entitled the 60% back-wages from the date of termination 16th April, 1986 till the date of award 8th October, 1998 and full wages from date of award 8th October, 1998 till the date of actual reinstatement. Therefore, the award of granting full back wages by the Labour Court is modified as above.

Therefore, present petition is partly allowed. Rule made absolute to that extent and it is directed to the petitioner to reinstate the respondent-workman with continuity of service with all consequential benefits as if, respondent-workman was deemed to be in service through out within a period of six weeks from the date of receiving the certified copy of this order. It is further directed that the petitioner to pay 60% back wages to the respondent-workman from the date of termination 16th April, 1986 to the date of award i.e. 8th October, 1998 and it is further directed to pay full wages to the respondent-workman from the date of award i.e. 8th October, 1998 till the date of actual reinstatement within a period of eight weeks from the date of receiving certified copy of this order.

In view of the above observation and direction, the present petition is partly allowed. Rule made absolute to that extent. No order as to costs.

Date : 20-06-2000. (H.K.RATHOD,J.)

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